

EXHIBIT “A”

FILED AND RECORDED
OFFICE OF SUPERIOR COURT
TALBOT COUNTY, GEORGIA

2004 DEC 27 PM 12:57

LINDA B. LUCAS, CLERK

**IN THE SUPERIOR COURT
FOR THE COUNTY OF TALBOT
STATE OF GEORGIA**

MADGE OLIVER,

*

Plaintiff

*

VS.

*

**METALCRAFT OF
MAYVILLE, INC.,**

*

CIVIL ACTION NUMBER:

2004-CV-160

Defendant

*

COMPLAINT FOR DAMAGES

COMES NOW Madge Oliver, as plaintiff, and respectfully shows:

JURISDICTION AND VENUE

1.

Plaintiff is a resident of Talbot County, Georgia.

2.

Defendant is a Wisconsin business corporation and is a foreign corporation with no agent for service registered in the State of Georgia.

Defendant previously had an agent for service but has allowed the

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registration to lapse. The registered agent for defendant in Wisconsin is Edwin A. Gallun, Jr., 1000 Metalcraft Drive, Post Office Box 151, Mayville, Wisconsin 53050.

3.

Defendant is subject to the jurisdiction of this court as a nonresident committing a tort within the State of Georgia. The tort alleged was committed in Talbot County, Georgia and venue lies in Talbot County, Georgia under O.C.G.A. § 9-10-93.

4.

Plaintiff seeks service on defendant under O.C.G.A. § 9-11-4 and O.C.G.A. § 14-2-1510 and by personal service.

OPERATIVE FACTS

5.

On June 5, 2001, David Ward, Jr., plaintiff's brother, purchased a new commercial lawn mower (herein "the mower") from Jack Peek's Sales, Inc. in Palmetto, Georgia, which was manufactured by defendant.

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6.

On June 5, 2001, Jack Peek's Sales, Inc. was an authorized dealer and seller of new equipment by defendant.

7.

The mower purchased was a Tiger Cub 19HP KAW 48" AD mower. The model number of the mower was STC48A-19KA. The serial number of the mower was 5880501.

8.

The plaintiff, in turn, purchased the above-described mower from her brother and notified defendant's agent of the purchase and over a period of months purchased normal replacement items, such as belts, for the mower from defendant's agent.

9.

At all times relevant to this action, plaintiff was familiar with the proper operation and maintenance of the mower and carried out the operation and maintenance of the mower in a safe and reasonable manner, consistent with the operator's manual.

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10.

On July 1, 2003, plaintiff was operating the mower at her home in Talbot County, Georgia when the mower, suddenly and without warning, burst into flames, causing severe injuries to plaintiff, including second and third degree burns to her arms and legs.

11.

Plaintiff received initial treatment for her burns at the scene by the Talbot County EMS. She was then transported by ambulance to The Medical Center in Columbus, Georgia, where she was hospitalized and received further treatment. Subsequent to her hospitalization, she received burn therapy at The Medical Center. Plaintiff is left with permanent scarring to her legs and arms as a result of the burns, and no treatment is available in the future to improve her condition. The fire totally destroyed the mower.

12.

In November 2003, plaintiff received a Product Recall letter from Jerry Bailey, President of Scag Power Equipment, a division of defendant, a copy of which letter is attached to this complaint as "Exhibit A" and by reference made a part hereof. The letter informed plaintiff that the vent line

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on the mower could, under certain conditions, leak gasoline, leading to a risk of fire. Unfortunately, by the time plaintiff received the letter, she had already been injured by the fire discussed in the letter.

LEGAL DUTIES OWED TO THE PLAINTIFF

13.

O.C.G.A. § 51-1-11(b) provides that the manufacturer of any personal property sold as new property, directly or through a dealer or any other person, shall be liable in tort, irrespective of privity, to any natural person who may use, consume, or reasonably be affected by the property and who suffers injury to his person or property because the property when sold by the manufacturer was not merchantable and reasonably suited to the use intended, and its condition when sold is the proximate cause of the injury sustained.

14.

In accordance with the code section described in Paragraph 13, the defendant had a duty to design the mower and its vent fuel system in a reasonably safe manner.

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15.

In accordance with the code section described in Paragraph 13, the defendant had a duty to warn plaintiff of the design defects of the mower.

LIABILITY DUE TO DESIGN DEFECT

16.

The defendant is liable to the plaintiff for damages due to the fact that there was a design defect that caused a grave and severe danger to the plaintiff; that there was a high likelihood of injury to plaintiff from fire due to the design defect; that, absent specific warning, the plaintiff had no way of knowing about the design defect; that once fire was caused by the design defect, there was no ability of the plaintiff to avoid the injury; that the design defect could have been remedied at little or no cost; and the danger could have been eliminated without impairing the usefulness of the mower or increasing the cost.

17.

The defendant is liable to the plaintiff for damages because the design defect in the vent fuel line of the mower was the direct and proximate cause of plaintiff's injuries.

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LIABILITY DUE TO FAILURE TO WARN

18.

The defendant is strictly liable to the plaintiff for failure to warn plaintiff of the design defect of the mower.

19.

The failure of the defendant to warn the plaintiff of the design defect of the mower was also a direct and proximate cause of plaintiff's injuries.

DAMAGES

20.

The plaintiff sustained temporary and permanent injuries due to the burns caused from the fire of the mower as described above.

21.

The plaintiff incurred medical bills in the past and medical bills in the future as a result of the burns she received from the fire as described above.

22.

The plaintiff has sustained a loss of her future capacity to labor and earn income as an item of general damages due to the injuries she received from the fire of the mower as described above.

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23.

The plaintiff has sustained severe physical and mental pain and suffering as a result of the fire of the mower as described in the preceding paragraphs.

24.

Plaintiff seeks compensatory damages in the form of special and general damages as a result of the injuries described in the preceding paragraphs.

25.

All of the injuries and damages sustained by the plaintiff were the direct and proximate result of the negligence of the defendant in defectively designing the mower and in failing to warn plaintiff of the defective design.

WHEREFORE, plaintiff demands:

- (a) That summons issue requiring the defendant to appear as provided by law and answer this complaint;
- (b) That plaintiff have and recover of the defendant damages for all her injuries in such amount as the jury shall deem just and

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adequate to fully compensate plaintiff for all her injuries, past and future;

- (c) That plaintiff have trial by jury;
- (d) That all costs be taxed against the defendant; and
- (e) That plaintiff have such other relief as the Court deems proper.

This 27th day of December, 2004.

THE ELLIOTT LAW FIRM

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